



OFFICE OF THE DEPUTY COMMISSIONER - LEGAL MATTERS

# LEGAL BUREAU BULLETIN

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- I.     **SUBJECT:**       WARRANTLESS SEARCHES OF CLOSED CONTAINERS  
                              PURSUANT TO THE EXIGENT CIRCUMSTANCES AND  
                              EMERGENCY EXCEPTIONS
- II.    **QUESTION:**     May a police officer conduct a warrantless search of a closed  
                              container?
- III.   **ANSWER:**       Yes. According to the New York State Court of Appeals in People  
                              v. Jenkins, 2014 NY Slip Op 07007 (2014) a police officer may  
                              conduct a warrantless search of a closed container located in a  
                              home when there is probable cause to search and urgent  
                              circumstances threaten destruction of contraband or evidence or  
                              officers must protect life or property.

## IV.    DISCUSSION

### A.   Introduction

The New York State Court of Appeals recently issued a decision in People v. Jenkins, which clarifies the scope of when an officer is allowed to conduct a warrantless search of a closed container in a home, pursuant to the exigent circumstances and emergency doctrines. This decision explains that officers must face an emergency situation or exigent circumstances in order to conduct a warrantless search of a closed container present in a home.

The purpose of this bulletin is to summarize the facts and holding of this case and to explain its impact on the New York City Police Department.

### B.   Facts

Two police officers entered an apartment building after they heard gunshots and observed muzzle fire from the roof of the apartment building. The officers were proceeding up the building stairwell toward the roof when they heard a gunshot directly above them. Upon reaching the eighth floor and hearing voices in the hallway, the officers entered the hallway and observed defendant holding a firearm. Subsequently, the defendant, along with another man, fled into an apartment. The officers gained access to the otherwise locked and unanswered apartment by breaking down the door with a sledgehammer.

Upon entering the apartment, the police officers observed and spoke to two women in the living room who denied that any men entered the apartment. A search of the apartment revealed the defendant, along with the other man, under a bed. The officers then removed the men from the room, frisked them, placed them in handcuffs, and took them into the living room. By the time the men were taken to the living room along with the two women the officers had encountered upon entering the apartment, several more officers had arrived and were present in the living room. One officer left the living room to return to the room where the defendant had been found. A search of that room revealed no gun; however a search of the adjoining bedroom revealed a closed metal box, which the officer shook and, after hearing a sound, opened. The officer recovered the gun from the box, subsequently returning to the living room and placing the defendant under arrest.

The defendant moved to suppress the gun, and the Appellate Division denied the defendant's motion. On appeal, the Court of Appeals granted the motion to suppress the gun and dismissed the indictment.

### **C. Holding**

The Court of Appeals held that the warrantless search of the closed metal box was improper and unconstitutional. The Court explained that a warrantless search of a closed container, without the presence of an emergency or exigent circumstance was per se unreasonable and unconstitutional.

The Jenkins Court further explained that officers may invoke the exigent circumstances exception to the warrant requirement if:

- 1) The officers have probable cause to justify a search, and
- 2) Events are so urgent that it is impossible to obtain a warrant in time to preserve evidence or contraband that is threatened to be removed or destroyed.

Even where such urgent events occur, the scope of the permitted officer conduct is limited to the necessity of the circumstances under which the permission is derived. Thus, officers are not permitted to do more than is necessary to preserve the evidence or contraband, in light of the exigent circumstances present. Any further action requires a warrant or proper circumstances that allow an officer to invoke another warrant exception.

Additionally, the Court explained that officers are justified in invoking the emergency doctrine exception to the warrant requirement, if the main objective is to protect life or property. The Court clarified that the exigent circumstances exception applies to circumstances involving the arrest of a wrongdoer and the protection of evidence from destruction or removal, while the emergency doctrine applies to protection of life and property.

In Jenkins, the Court ultimately found that there was no exigent or urgent circumstance justifying the officer's decision to open the closed box in the bedroom. This decision was based on the fact that the officers were in complete control of the apartment and all of the apartment's occupants were out of commission—the defendant and his cohort were removed from under the bed, handcuffed and taken to the living room, the two women were also in the living room, and all four apartment occupants were under police surveillance. There was no danger that defendant

or any other person present in the apartment could destroy or remove the gun from the premises. The Jenkins Court also found that there was also no emergency present, as the safety of the two women in the apartment was no longer an issue after the officers handcuffed the two men and placed them under officer surveillance in the living room.

Because there was no emergency or exigent circumstance, the Court held that the search of the closed metal box was unconstitutional in violation of the Fourth Amendment. Accordingly, the Court suppressed the gun that was recovered from the metal box and dismissed the indictment.

#### **D. The Impact of the Jenkins Decision on the NYPD**

The Court's holding in Jenkins, confirms that officers may only conduct a warrantless search of a closed container present in the home at the time of arrest if they face exigent circumstances or an emergency. Officers may conduct a search without a warrant if they have probable cause to search, but there are urgent events that make it impossible to obtain a warrant before evidence or contraband is removed. Officers may also conduct a search of a closed container if the search is necessary to protect life or property.

It should be noted that in Jenkins there was no dispute as to the warrantless entry into the apartment. Exigent circumstances, namely the gun fire on the roof, the gunfire in the stairwell, and the officers' observation of the defendant and his cohort fleeing into the apartment, justified this warrantless entry into the apartment.<sup>1</sup> The only disputed issue in this case was the warrantless search of the closed metal box once the officers had entered the apartment.

#### **E. Conclusion**

The Court's decision in Jenkins serves to clarify both the exigent circumstances exception and the emergency doctrine exception to the general principle that under the Fourth and Fourteenth Amendments, a warrant is required for a police officer to conduct a search of a closed container. This decision explains the circumstances under which it is proper to conduct a warrantless search of a closed container in the home by invoking the exigent circumstances exception or emergency exception. Officers should keep in mind that the exigent circumstances exception requires urgent events that threaten the destruction or removal of contraband or evidence of a crime, while the emergency exception requires events that call for the protection of life or property. Officers may not do more than is necessary to preserve the contraband or evidence or protect the life or property that is threatened.

Officers should recognize that this decision does not foreclose them from conducting a search of a closed container by other means, such as by seeking consent, or searching the closed container incident to a lawful arrest.<sup>2</sup> Where there is probable cause to believe that the closed container holds contraband or evidence of a crime and there is no applicable warrant exception, officers may apply for a search warrant.

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<sup>1</sup> Reference Legal Bureau Bulletin, Volume 44, Number 2, for a detailed discussion of arresting a suspect in his home without a warrant.

<sup>2</sup> Reference Legal Bureau Bulletin, Volume 44, Number 3, for a more detailed discussion of searches of a closed container incident to arrest, as well as other means for officers to conduct a search of a closed container.

Any questions about the above-discussed principles should be directed to the Legal Bureau at (646) 610-5400.

This bulletin was prepared by  
Cherie Brown, Law Fellow, Legal Bureau